DESCRIPTION OF PROPOSALS RELATING TO SUPERFUND COVERAGE OF PESTICIDE CONTAMINATION IN GROUNDWATER

Scheduled for a Field Hearing
(Honolulu, Hawaii)

Before the

COMMITTEE ON WAYS AND MEANS

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Prepared by the Staff

of the

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The Committee on Ways and Means has scheduled a public hearing on May 31, 1985, on tax aspects of coverage under the "Superfund" program of groundwater contamination by pesticides. The Superfund program, including the Hazardous Substance Response Trust Fund, is authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), the tax provisions of which are scheduled to expire after September 30, 1985.

This document[1] provides a summary of the provisions of present law and proposed bills relating to the financing of the Superfund and the purposes for which the Trust Fund may be used.[2]

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[1] This document may be cited as follows: Joint Committee on Taxation, Description of Proposals Relating to Superfund Coverage of Pesticide Contamination in Groundwater (JCX-6-85), May 1, 1985.

[2] A more comprehensive description is contained in: Joint Committee on Taxation, Background and Issues Relating to House Bills for Reauthorization and Financing of the Superfund (JCS-13-85), May 8, 1985.

I. PRESENT LAW

A. Superfund Tax and Trust Fund Provisions

Under present law, excise taxes are imposed on crude oil and certain chemicals, and revenues equivalent to these taxes are deposited into the Hazardous Substance Response Trust Fund ("Superfund"). In addition, $44 million per year of general revenue is authorized to be appropriated to the Superfund. These amounts are available for expenditures incurred in connection with releases or threatened releases of hazardous substances into the environment. These provisions were enacted in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), which established a comprehensive system of notification, emergency response, enforcement, and liability for hazardous spills and uncontrolled hazardous waste sites.

A crude oil tax of 0.79 cent per barrel is imposed on the receipt of crude oil at a U.S. refinery, the import of crude oil and petroleum products, and the use or export of domestically produced crude oil (if the tax has not already been paid).

An excise tax on chemical feedstocks is imposed on the sale or use of 42 specified organic and inorganic feedstocks if they are produced in or imported into the United States. The taxable feedstocks generally are hazardous or create hazardous products or wastes when used. The rates vary from 22 cents per ton to $4.87 per ton.

These excise taxes are scheduled to terminate after September 30, 1985.

B. Non-tax Provisions

1. General provisions

CERCLA provides a statutory scheme to insure prompt response to and cleanup of releases of hazardous substances. The burden of paying for such actions is placed on the responsible party or, where the responsible party cannot be identified or held liable, on producers and users of the chemical feedstocks generally associated with the production of hazardous substances. In general, the law is designed to allow a governmental response to proceed where necessary, with the parties legally responsible for the release of hazardous substances later being held liable (without regard to fault) for damages and costs resulting from the release. To accomplish this, CERCLA created the Superfund, described above, to be available for response actions and certain related liability claims.

Under CERCLA, the President is authorized, in the case of a release or threatened release of a hazardous substance

(including pesticides) into the environment, to take whatever removal, remedial or other response action he determines to be appropriate under the National Contingency Plan (originally contained in the Clean Water Act but subsequently revised to apply to CERCLA). Releases subject to CERCLA include any release of a hazardous substance, other than workplace releases, certain nuclear releases, engine exhausts, and the normal application of fertilizer. Hazardous substances are defined as substances identified in specified sections of the Clean Water Act, the Clean Air Act, the Solid Waste Disposal Act, and the Toxic Substance Control Act, and those designated under CERCLA. Hazardous substances do not include petroleum (unless specifically designated as hazardous under these laws), or natural or synthetic gases. The Environmental Protection Agency ("EPA") is authorized to designate additional substances as hazardous if they present substantial danger to the public health or welfare or to the environment.

CERCLA required the Federal government to develop a national list of sites (the National Priorities List) which are serious enough to require remedial action. The National Priorties List is required to include the 400 most hazardous sites, and is required to be updated annually. In compiling this list, EPA identifies and evaluates hazardous sites, beginning with a preliminary assessment of available information and proceeding (where appropriate) to an actual site inspection. The sites are then ranked according to criteria relating to relative potential danger from the release or threatened release of hazardous substances into the air, surface water, or groundwater at the site, with the highest ranking sites being selected for the National Priorties List.

Sites which are listed on the National Priorities List are eligible for EPA long-term cleanup actions, using money from the Superfund. The State in which the site is located generally is required to pay 10 percent of the capital and first-year operating costs of a remedial action (50 percent or greater for State or locally owned or operated sites) and 100 percent of the operating costs in subsequent years.

As an alternative to proceeding with a Superfund financed clean-up, EPA has authority, under section 106 of CERCLA, to initiate enforcement actions (including civil action and administrative orders) to compel responsible parties to finance cleanup activities (see description of liability provisions below). EPA also has broad authority to enter into negotiations with responsible parties regarding voluntary cleanups or cash settlements. The availability of these alternatives (i.e., negotiation, enforcement, and federally funded cleanup) is intended to permit a larger number of sites to be cleaned up than would be possible using any one method.

If a governmental cleanup is initiated, EPA has further authority to allow the State to take a lead role in site response (cooperative agreements) or (if EPA takes the lead role) to follow various long-term cleanup strategies. EPA also may initiate removal actions (including removal of hazardous substances, evacuation of affected persons, and other emergency measures) to prevent immediate and significant harm to human life, health, or the environment.

In addition to the cost of cleanup applications, there is authorized to be paid out of the Superfund certain unsatisfied claims for damages resulting from the release of hazardous substances; claims for injury to, or destruction of, natural resources owned or controlled by the Federal or State governments; and specified costs relating to site response or resource restoration. Payment of these claims by the Fund transfers to the Fund the right of the claimant to sue the party responsible for releasing the hazardous substance. Thus, Fund representatives may attempt to recover claim payments from the responsible party or parties. There is no general provision for private damage claims against the Fund.

2. Liability provisions

Section 107 of CERCLA imposes liability for cleanup costs incurred under the National Contingency Plan, and for costs associated with natural resource damages, on any person who is or was the owner or operator of a site or the generator or transporter of hazardous substances released into the environment. A strict liability standard (i.e., regardless of negligence) applies, and only limited defenses (including acts of war, acts of God, and acts of independent third parties where the defendant exercises due care) are allowed.

On the other hand, no liability arises under CERCLA with respect to releases permitted under provisions of existing Federal laws or the application of pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act.

Liability under CERCLA generally is limited to $50 million per release, allowing owners and operators more readily to obtain insurance for their liability. In addition, owners and operators of vessels and offshore facilities are required to maintain evidence of financial responsibility, and the President is authorized to provide financial responsibility requirements for onshore facilities beginning in 1985.

The amounts recovered under these liability provisions are deposited in the Superfund. CERCLA also provides for certain penalties and punitive damages which are to be deposited in the fund. These include punitive damages of up

to three times the amount of costs incurred as a result of the failure without sufficient cause, by a person liable for a release or threatened release of a hazardous substance, to provide proper removal or remedial action upon order of the President pursuant to the Act.

CERCLA also authorizes creation of an Agency for Toxic Substances and Disease Registry to improve data collection and otherwise assist in matters concerning toxic substances and human health.

II. DESCRIPTION OF PROPOSALS

A. Administration Proposal (H.R. 1342)[3]

1. Tax and trust fund provisions

The Administration proposal would extend the Superfund through September 30, 1990, and provide a projected $4.5 billion in tax revenues ($5.3 billion including interest and recoveries) to the Fund during the extension period. These revenues would be derived primarily from the following sources.

Petroleum and feedstock chemicals taxes.--The Administration proposal would provide a five-year extension of the excise taxes on petroleum and feedstock chemicals, at their present law rates. These taxes would generally expire after September 30, 1990; however, a special rule would provide for earlier suspension or termination of the taxes if the unobligated Superfund balance exceeds $1.5 billion. There is also a trust fund provision under which authority to collect the petroleum, feedstock chemical, and waste management taxes would expire when and if cumulative Superfund receipts after September 30, 1985 (i.e., during the reauthorization period) total $5.3 billion.

Waste management tax.--The Administration proposal would impose a new excise tax on the treatment, storage, disposal (including ocean disposal), or export of hazardous wastes ("waste management" tax), effective October 1, 1985. This tax would terminate on September 30, 1990, unless extended through March 31, 1991, in the event of a revenue shortfall.[4] This tax would be imposed at four distinct rates: (1) a rate of 25 cents per ton on hazardous waste received at waste water treatment facilities; (2) a rate of $5 per ton on hazardous waste received at deep well injection facilities; (3) a rate of $35 per ton, phasing up to $40 per ton during

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[3] This proposal was introduced by Mr. Broyhill at the request of the Administration.

[4] This summary reflects modifications to the waste management tax proposed by the Treasury Department in testimony before the Senate Committee on Finance, April 25, 1985.

the reauthorization period, on hazardous waste received at landfills, surface impoundments (other than surface impoundments contained in waste water or deep well injection facilities), waste piles, or land treatment units;[5] and (4) a rate of $6 per ton, phasing up to $7.80 per ton, on any hazardous waste received at all other RCRA permitted units, as well as the export or ocean disposal of hazardous waste. These rates would be further adjusted, beginning October 1, 1987, to compensate for shortfalls from overall Superfund revenue targets. Exemptions would be provided for certain hazardous waste disposals pursuant to CERCLA and RCRA and for waste generated at a Federal facility; however, no general exemption would be provided for the treatment of hazardous wastes. The waste management tax is intended to raise approximately two-thirds of the total Superfund tax revenues under the Administration proposal.

Under the Administration proposal, the substantive trust fund provisions would generally be equivalent to present law. However, the proposal would delete natural resource damage claims (section 111(b) of present law CERCLA) as a permitted Superfund expenditure purpose.

2. Non-tax provisions affecting the Hazardous Substance Superfund

In addition to the tax and trust fund provisions described above, the Administration proposal would make various changes in the non-tax portions of CERCLA. Aspects of the proposal most likely to affect the uses of Superfund proceeds include the following matters.

Scope of activities.--The proposal would prohibit Superfund response from certain categories of releases, including releases:

(1) from lawful application of pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act;

(2) from mining activities covered under the Surface Mining Control and Acclamation Act of 1977;

(3) affecting residential, business, or community structures when contamination is not caused by a release from a hazardous substance treatment, storage, or disposal facility;

(4) affecting public or private domestic water supply

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[5] These and other terms generally would be defined by reference to Title II of the Solid Waste Disposal Act, as amended ("SWDA"), also known as the Resource Conservation and Recovery Act ("RCRA").

wells when contamination is not caused by a release from a hazardous substance treatment, storage, or disposal facility;

(5) from naturally occurring substances in their unaltered form; and

(6) covered by and in compliance with a permit issued under other Federal environmental laws.

These exclusions would not apply if the President determines that a major public health or environmental emergency exists and that no other person has the authority or capability to respond in a timely manner.

Cleanup standards.--The proposal would establish benchmark cleanup standards for Superfund sites. In general, these standards set levels of protection equal to those established by other environmental statutes, and are intended to promote permanent cleanup solutions at Superfund sites.

State responsibilities.--The State "matching share" of capital cleanup costs would be increased from 10 to 20 percent (from 50 to 75 percent for State-operated sites). However, the proposal also would allow States to enact taxes similar to the Superfund taxes (this is preempted under present law), and allow certain State enforcement costs to be eligible for funding.

Enforcement.--Enforcement provisions would be strengthened in several ways: including an increase in civil and criminal penalties; a provision for imposition of real property liens on responsible parties; and delay of contribution suits between potentially liable parties until after enforcement actions are judged or settled.

Community involvement.--The proposal includes a statutory requirement that affected citizens be notified of proposed cleanup actions, and be given an opportunity to comment.

B. H.R. 1775 (Rep. Moore)--"Superfund Revenue Reauthorization Act of 1985"

This bill is intended to provide $5.3 billion of financing for the Superfund over the 5-year reauthorization period. Of this amount, $1.5 billion is from general revenue appropriations, $0.8 billion is from interest income and the recovery of clean-up costs from responsible parties, and $3.0 billion is from taxes. The tax revenues are derived from a tax on petroleum and chemical feedstocks, a tax on imported chemical derivatives, and a tax on hazardous wastes.

Petroleum tax.--The current law tax on petroleum and imported petroleum products would be reduced from 0.79 cent

to 0.17 cent per barrel.

Chemical feedstock tax.--The existing list of taxable chemical feedstocks would be expanded to include the same feedstocks taxed under H.R. 5640 as passed by the House in 1984. The tax rates on petrochemical feedstocks would generally be decreased, while the tax rates on inorganic feedstocks would generally be increased (as compared to present law). The tax rates would be indexed for inflation, and a credit or refund would be allowed for exported chemical feedstocks.

The amended petroleum and chemical feedstock taxes would be effective from October 1, 1985, through September 30, 1990, but would be suspended under specified conditions when the unobligated Trust Fund balance exceeded $1.5 billion.

Imported chemical derivatives tax.--A tax, effective October 1, 1986, would be imposed on imported substances directly and substantially produced from taxable feedstocks (as determined under Treasury regulations). The amount of this tax would be equal to the tax that would have been imposed on the feedstocks used to manufacture the imported substance (if the imported derivative were produced in the United States). If this could not be established, the tax would be equal to 5 percent of the appraised value of the imported substance. This tax would terminate after September 30, 1990.

Tax on hazardous waste.--A tax would be imposed on the receipt of hazardous waste at a facility regulated under the Resource Conservation and Recovery Act ("RCRA") or at an ocean disposal facility. A "backup" tax would be imposed on hazardous waste, not otherwise subject to tax within 270 days of generation, except waste generated by a small generator (100 kilograms or less of hazardous waste per month).

The hazardous waste tax would be imposed at a rate of $9.80 per ton in fiscal year 1986, increasing to $16.32 per ton in 1990, for land disposal (including landfills, surface impoundments, waste piles, and land treatment units). A lower rate of $2.45 per ton (increasing to $4.08 per ton in 1990) would apply to all other forms of storage or disposal of hazardous waste including underground injection wells. The backup tax would be imposed at the higher rate (reduced to the lower rate on exports). These rates would be increased under a statutory formula if necessary to meet overall Superfund revenue targets. An exclusion from the tax would be provided for biological wastewater treatment facilities meeting RCRA standards and for other forms of treatment having a destruction efficiency at least as great as incineration. Additionally, hazardous wastes associated with certain Superfund response actions would be exempt from the tax.

This tax would generally be effective from October 1, 1985, through September 30, 1990; however, the tax would be extended until March 31, 1991, if necessary to meet the intended 5-year revenue target.

Under the bill, the substantive trust fund provisions are generally equivalent to present law, except that natural resource damage claims would be deleted as a permitted expenditure purpose.

C. H.R. 2022 (Rep. Sikorski and others)--"Superfund Expansion and Protection Act of 1985"

1. Tax and trust fund provisions

This bill is intended to raise $11.7 billion in Superfund revenues ($1.4 billion in general revenue appropriations and $10.3 billion of tax revenues) over the 5-year reauthorization period. The tax revenues are derived from the following sources.

Petroleum tax.--The bill would increase the current law tax on petroleum and imported petroleum products from 0.79 cent to 15.8 cents per barrel.

Chemical feedstock tax.--A tax would be imposed on the same list of chemical feedstocks as under H.R. 5640 (98th Congress), as passed by the House in 1984, at rates that would have applied under H.R. 5640. (These rates are higher than present law for both organic and inorganic chemicals.) The tax rates would be indexed for inflation, and a credit or refund would be allowed for exported feedstocks. The bill also would require a study of the feasibility of a tax on imported chemical derivatives, but would not actually impose such a tax.

The amended petroleum and chemical feedstock taxes would be effective from October 1, 1985, through September 30, 1990.

Tax on hazardous waste.--A tax would be imposed, beginning on October 1, 1986, on the receipt of hazardous waste at a RCRA-regulated facility or for purposes of ocean disposal, as well as the export of hazardous waste. This tax would be imposed at a rate of $5.05 per ton in fiscal year 1987, increasing to $8.16 per ton in 1990, for land disposal of hazardous waste (including landfills, surface impoundments, waste piles, land treatment units, and underground injection wells). A lower rate of $1.34 per ton (increasing to $2.19 per ton in 1990) would apply to export, ocean disposal, and all other forms of storage or disposal of hazardous waste. Exclusions from the tax would be provided for wastes disposed of as part of certain Superfund response activities and for Federally generated waste. Where the tax would not otherwise apply (e.g., "midnight dumping"), a tax

would be imposed at the higher statutory rate on the responsible person (subject to certain exceptions).

The tax on hazardous waste generally would be effective from October 1, 1986, through September 30, 1990.

The trust fund provisions of the bill include the repeal of natural resource damage claims as a permitted expenditure purpose and the allocation of up to $850 million of general revenues to a special fund for responding to leaking underground storage tanks and other petroleum-related releases.

2. Non-tax provisions

In addition to the tax and trust fund provisions described above, the bill would make various changes in the non-tax portions of CERCLA. These include:

Mandatory cleanup schedule.--The bill would set as goals the beginning of cleanup actions at 200 sites annually and completing cleanup within 5 years at all 800 sites now on the National Priorities List (NPL).

Cleanup standards.--The bill would require EPA to apply the most stringent requirements of all major Federal environmental laws to any cleanup action and would require a permanent treatment remedy whenever technologically feasible.

State responsibilities.--Under the bill, the Federal share of long-term operation and maintenance costs would be 90 percent and the State share would be 10 percent. Under present law, such costs are entirely financed by States.

Community involvement.--The bill would require EPA to give affected communities the right to comment on cleanup plans for sites and to petition for possible inclusion on the NPL and would give citizens the right to sue to compel cleanup by private parties and to order the EPA Administrator to fulfill any statutory requirement.

Leaking underground storage tanks.--The bill would permit use of Superfund for cleanup of damage resulting from leaking underground gasoline storage tanks.

APPENDIX

DESCRIPTION OF HAWAIIAN SITES, PROPOSED FOR NATIONAL PRIORITIES LIST BECAUSE OF GROUNDWATER CONTAMINATION BY PESTICIDES

The following are the Environmental Protection Agency's descriptions of 6 Hawaiian sites it proposed, on September 22, 1984, to add to the National Priorities List on account of groundwater contamination by pesticides.

1. Kunia Wells I
(County of Honolulu, Island of Oahu)

The Kunia Wells I Site consists of four drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. The Kunia Wells I are part of a distribution system which serves 21,000 people.

There are several well sites with similar contamination problems located in the Schofield Plateau/Ewa Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing dibramochloropropane and TCP with granulated activated carbon and with aeration towers.

2. Kunia Wells II
(County of Honolulu, Island of Oahu)

The Kunia Wells II Site consists of two drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with dibromochloropropane (DBCP) and trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. They have been closed since July 1983. The wells are part of the Kunia distribution system that provides drinking water to about 13,700 people.

There are several well sites with similar contamination problems located in the Schofield Plateau/EWA Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers.

3. Mililani Wells

(County of Honolulu, Island of Oahu)

The Mililani Wells Site consists of six drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with dibromochloropropane (DBCP) and trichloropropane (TCP), according to tests conducted by the Hawaii Department of Health and other government agencies. Three of the wells are presently not being used. The Mililani wells normally supply water to 19,500 people through a closed distribution system.

There are several well sites with similar contamination problems located in the Schofield Plateau/EWA Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers.

4. Waiawa Shaft
(County of Honolulu, Island of Oahu)

The Waiawa Shaft is located on the Ewa Plain in the County of Honolulu, Island of Oahu, Hawaii, and is owned and operated by the U.S. Navy. The well is part of a closed distribution system which provides drinking water to 64,000 people in the area of McGrew Point, Pearl Harbor, and part of Hickam Air Force Base. The well is contaminated with dibromochloropropane (DBCP) and trichloropropane (TCP), according to analyses conducted by the U.S. Navy and other government agencies.

There are several well sites with similar contamination problems located in the Schofield Plateau/EWA Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers. The Navy is currently reviewing alternative treatment methods for DBCP removal in a study designed to complement the Brand of Water Supply effort.

5. Waipahu Wells
(County of Honolulu, Island of Oahu)

The Waipahu Wells Site consists of four drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located on the Ewa Plain in the County of Honolulu, Island of Oahu, Hawaii. They are contaminated with ethylene dibromide (EDB) and trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. The Waipahu Wells are part of a distribution

system which serves 13,700 people in Waipahu, Ewa, and Waianae.

There are several well sites with similar contamination problems located in the Schofield Plateau/EWA Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing DBCP and TCP with granulated activated carbon and with aeration towers. However, because of continuing contamination, the people served by the Waipahu Wells are being provided with an alternative supply of drinking water.

6. Waipio Heights Wells II
(County of Honolulu, Island of Oahu)

The Waipio Heights Wells II Site consists of two drinking water wells that are owned and operated by the City and County of Honolulu. The wells are located in Waipio on the lower Schofield Plateau in the County of Honolulu, Island of Oahu, Hawaii. One well is contaminated with trichloropropane (TCP), according to analyses conducted by the Hawaii Department of Health and other government agencies. The other well has been shut down for repairs and has not been tested for contamination. The wells are part of a distribution system which serves 3,400 people in the Waipio Heights area.

There are several well sites with similar contamination problems located in the Schofield Plateau/EWA Plain area of Oahu. The City and County of Honolulu Board of Water Supply has conducted pilot tests on methods for decontaminating the water in the area and has had success in removing dibromochloropropane and TCP with granulated activated carbon and with aeration towers.